

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BRIAN L. BROWN,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-06-228-F
)	
DON NARVAIS,)	
)	
Defendant.)	

ORDER

On May 4, 2007, plaintiff, Brian L. Brown, filed a Notice of Appeal, appealing from the court's order and judgment entered on April 25, 2007, dismissing plaintiff's civil rights action brought pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Contemporaneous with the Notice of Appeal, plaintiff filed a Motion for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 (doc. no. 67). Subsequently, on May 10, 2007, the court entered an order denying plaintiff's motion, finding and certifying, pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3)(A), that the appeal by plaintiff was not taken in good faith. (doc. no. 70).

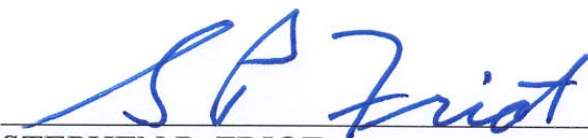
On May 21, 2007, plaintiff filed an Amended Notice of Appeal, seeking to appeal the court's order denying plaintiff's motion for leave to proceed on appeal *in forma pauperis*. In addition to filing the amended notice, plaintiff filed an Amended Motion for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24. (doc. no. 72).

As stated, the court has previously denied plaintiff's request to proceed on appeal *in forma pauperis* as to the court's order and judgment of April 25, 2007, which is the subject of plaintiff's original Notice of Appeal. Plaintiff's Amended Notice of Appeal simply adds the court's order denying plaintiff's motion for leave

to proceed on appeal *in forma pauperis* as an issue for appeal. The court's view as to plaintiff's appeal of the court's order and judgment and its reason for denying plaintiff leave to proceed on appeal *in forma pauperis* has not changed. To the extent that plaintiff is requesting reconsideration of the court's order of May 10, 2007, the court declines to reconsider such order and denies such request. To the extent that plaintiff is seeking a ruling from the court for leave to proceed on appeal *in forma pauperis* as to the Amended Notice of Appeal, which now includes the court's order denying plaintiff's motion for leave to proceed *in forma pauperis* on appeal, the court concludes that the motion should be stricken. The plaintiff is not required to file such motion with the court. Because the court has previously denied plaintiff leave to proceed on appeal *in forma pauperis*, the court concludes any further request by plaintiff for leave to proceed in forma pauperis (as to the original Notice of Appeal as well as the Amended Notice of Appeal) should be filed with and decided by the Tenth Circuit Court of Appeals.

Accordingly, Plaintiff's Amended Motion for Leave to Proceed on Appeal Pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 is **DENIED** to the extent it seeks reconsideration of the court's May 10, 2007 order, and is **STRICKEN** to the extent it seeks leave from this court and not the Tenth Circuit Court of Appeals to proceed on appeal in forma pauperis.

Entered this 25th day of May, 2007.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE